

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MILES COURTNEY WEAVER,

Defendant and Appellant.

D052603

(Super. Ct. No. SCD186134)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed as modified and remanded.

In 2005 in case number SCD186134, Miles Courtney Weaver entered a negotiated guilty plea pursuant to *People v. West* (1970) 3 Cal.3d 595 to selling cocaine base (Health & Saf. Code, § 11352, subd. (a)). The court suspended execution of a five-year upper term sentence, placed him on five years' probation, and imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), and stayed a \$200 probation revocation fine (Pen. Code, § 1202.44).

In 2006 in case number SCD198275, Weaver pleaded guilty to possessing cocaine base for sale (Health & Saf. Code, § 11351.5) and admitted three prior Health and Safety Code section 11352 convictions (Health & Saf. Code, § 11370.2, subd. (a) and two prior prison terms (Pen. Code, § 667.5, subd. (b)). The court dismissed the prison priors and sentenced him to prison for five years: the five-year upper term for possessing cocaine base for sale, to run concurrently with the sentence in case number SCD186134. It "imposed but stayed" three-year terms for the Health and Safety Code section 11370.2 enhancements, imposed a \$500 restitution fine and a \$500 parole revocation fine (Pen. Code, § 1202.45), and suspended criminal proceedings (Welf. & Inst. Code, § 3051). In case number SCD186134, the court revoked probation, executed the five-year sentence, imposed an \$800 restitution fine and an \$800 parole revocation fine, and suspended criminal proceedings (Welf. & Inst. Code, § 3051). The court ordered Weaver committed to the California Rehabilitation Center (CRC) in both cases.

In 2007, the court vacated the CRC commitments, reinstated criminal proceedings, and vacated the previous sentences. In case number SCD198275, it again dismissed the prison priors; stayed (Pen. Code, § 654) three-year terms for the Health and Safety Code section 11370.2, subdivision (a) enhancements; and resentenced Weaver to prison for the five-year upper term. In case number SCD186134, the court sentenced Weaver to a concurrent three-year lower term. In both cases, it suspended execution of sentence and placed Weaver on probation for one year.

In late 2007, the court revoked probation in both cases. In 2008, it executed the concurrent five-year upper term prison sentences. In each case it imposed a \$1,000 restitution fine and a \$1,000 parole revocation fine. Weaver appeals.

Weaver first contends the court was not authorized to impose \$1,000 restitution and parole revocation fines because it originally imposed lower fines. The People properly concede that the \$1,000 restitution fines must be stricken and fines of \$200 (in case number SCD186134) and \$500 (in case number SCD198275) imposed. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823; *People v. Downey* (2000) 82 Cal.App.4th 899, 921-922; *People v. Johnson* (2003) 114 Cal.App.4th 284, 306-308.) Because the parole revocation fines cannot exceed the restitution fines, the parole revocation fines must also be reduced to \$200 and \$500, respectively. (Pen. Code, § 1202.45; *People v. Johnson, supra*, 114 Cal.App.4th at pp. 306-308.) We accordingly modify the judgment to reflect \$200 restitution and parole revocation fines in case number SCD186134 and \$500 restitution and parole revocation fines in case number SCD198275 in place of the higher fines.

Weaver next contends the Health and Safety Code section 11370.2, subdivision (a) enhancements must be stricken rather than stayed. In case number SCD186134, the plea bargain did not include an admission of the Health and Safety Code section 11370.2, subdivision (a) allegations and the court ordered those allegations stricken. In case number SCD198275, Weaver admitted three Health and Safety Code section 11370.2, subdivision (a) allegations and the court improperly stayed sentence on these enhancements. (*People v. McCray* (2006) 144 Cal.App.4th 258, 267.) Weaver asserts

that, in the interest of judicial economy, this court should strike the enhancements (Pen. Code, § 1385) because that is what the trial court intended. The People correctly contend the trial court's intentions are not clear from the record and the case should be remanded so that it may exercise its discretion to strike the enhancements pursuant to Penal Code section 1385 or impose them. (*Ibid.*)

DISPOSITION

The judgment is modified to reflect \$200 restitution and parole revocation fines in case number SCD186134 and \$500 restitution and parole revocation fines in case number SCD198275 in place of the higher fines. The judgment in case number SDC186134 is modified to reflect that the stay on the \$200 probation revocation fine is lifted. The case is remanded to the trial court so that it may exercise its discretion to strike the Health and Safety Code section 11370.2, subdivision (a) enhancements pursuant to Penal Code section 1385 or impose them. In all other respects, the judgment is affirmed.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.